member of the gang who is found armed, even though that other member neither uses nor attempts to use the fire-arm with which he is armed. Once common intention is proved, no armed member of such gang ought to be allowed to excuse himself by saying that he did not know nor anticipate that some other member of the gang would use, i.e. fire, or attempt to use, the fire-arm with which that other member was armed.

Failure of the Courts to differentiate between the facts of individual cases with regard to sentence, and failure to reserve the death sentence for the worst cases, would only be an incentive to a person found carrying a fire-arm to resist arrest by using it because he would receive no greater penalty by such use. In fact such failure would be an encouragement to the armed person to shoot his way out at all costs to escape arrest.

Keeping in mind the factors just stated, and applying them to the particular facts of this case now under appeal, where the appellant made no attempt to use the loaded revolver which he was carrying, but at once threw it away when challenged; also ignoring the appellant's statement to the police wrongly referred to at the trial; and in favour of the appellant taking into account his youth, he is not more than eighteen years of age, and his previous clean record, we reduce the sentence of death to one of ten years rigorous imprisonment to commence from the date of conviction.

Sentence reduced.

PANG FOOK AND ANOTHER v. PUBLIC PROSECUTOR.

[App. Criminal Juris. (Willan, C.J. (Malayan Union), Murray-Aynsley, C.J. (Singapore) and Pretheroe, J.) September 5, 1946]

Public Order and Safety Proclamation Section 3 (1) — Criminal Procedure Code, Section 160 — Accused originally charged with abetment of extortion charged at commencement of trial with offence under Section 6 and 3 (1) of the Public Order and Safety Proclamation — No adjournment granted and no counsel assigned to accused — Appeal allowed.

The facts in this case were as follows:—

The second appellant, Yap Chew Chai, supplied the first appellant, Pang Fook, with a loaded revolver which the first appellant used to commit the offence of extortion at Kepong, at about 8 p.m. on the 21st March, 1946. The victim chosen was a Chinese druggist who, when threatened by the first appellant, closed with him. In the ensuing struggle the first appellant fired his revolver three times and inflicted three separate and distinct gun shot wounds on the druggist. One of the bullets which hit the druggist passed dangerously near his heart but he was not killed. The first appellant was charged and convicted on three charges (1) Carrying arms contrary to Section 3 (1) of the Public Order and Safety Proclamation, (2) Extortion contrary to Section 387 of the Penal Code and (3) Attempted murder contrary to Section 307 of the Penal Code. On the first charge he was sentenced to death, on the second charge to five years rigorous imprisonment, and on the third charge to penal servitude for life. The second appellant was at first charged with one offence only, namely that of abetment of extortion contrary to Sections 109 and 387 of the Penal Code. At the commencement of the trial of both the appellants Crown Counsel applied to add a second charge against the second appellant viz. that of conspiring with the first appellant to commit the offence of carrying arms contrary to Sections 6 and 3 (1) of the Public Order and Safety Proclamation. The learned Judge acceded to this request of Crown Counsel, and the trial proceeded without the second appellant having had adequate notice that he would have to meet another charge of an offence for which one of the prescribed punishments is death, and also without counsel having been assigned to defend him. He was convicted and sentenced to three years rigorous imprisonment on the first charge and to death on the second charge. Both appellants appealed to the Court of Appeal against their convictions and sentences.

Held, (1) that as regards the first appellant, there were no merits in the appeal and no grounds whatsoever for reducing his sentence of death.

(2) that as regards the second appellant, he was clearly prejudiced by having to face the second charge without adequate notice and therefore his appeal against his conviction under the Public Order and Safety Proclamation must be allowed and a retrial ordered.

E. E. C. Thuraisingam for the appellants.

E. N. Griffith-Jones for the respondent.

The judgment of the Court of Appeal was delivered by:

Willan, C. J. :—In this case the first appellant was convicted on the three following charges :—

1. Carrying arms contrary to section 3 (1) of the Public Order and Safety Proclamation, No. 50.
2. Extortion, contrary to section 387 of the Penal Code.
3. Attempted murder contrary to section 307 of the Penal Code.

On the first charge he was sentenced to death, on the second charge to five years rigorous imprisonment, and on the third charge to penal servitude for life.

The second appellant was convicted on the following two charges :—

1. Abetment of extortion contrary to sections 109 and 387 of the Penal Code.

2. Conspiring with the first appellant to commit the offence of carrying arms, contrary to sections 6 and 3 (1) of the Public Order and Safety Proclamation, No. 50.

He was sentenced to three years rigorous imprisonment on the first charge and to death on the second charge.

Both appellants have appealed to this Court against their convictions and sentences.

The facts are that the second appellant supplied the first appellant with a loaded revolver which the first appellant used to commit the offence of extortion at Kepong, at about 8 p.m. on the 21st March, 1946. The victim chosen was a Chinese druggist, who, when threatened by the first appellant, closed with him. In the ensuing struggle the first appellant fired his revolver three times and inflicted three separate and distinct gun shot wounds on the druggist. One of the bullets which hit the druggist passed dangerously near his heart and the druggist is fortunate that he was not killed.

As regards the first appellant, there are no merits in his appeal against conviction and no grounds whatsoever for reducing his sentence of death. He obtained this loaded revolver for the specific purpose of committing the offence of extortion, and in committing that offence he fired the revolver three times and inflicted severe wounds on his victim. A worse case can hardly be imagined.

The appeal of the first appellant is accordingly dismissed.

As regards the second appellant, he was at first charged with one offence only, namely that of the abetment of extortion.

At the commencement of the trial of both the appellants Crown Counsel applied to add a second charge against the second appellant as follows :—

> That you, on or about the 21st March, 1946, at about 8 p.m. at Kepong did procure one Pang Fook to commit an offence under the Public Order and Safety Proclamation, No. 50, to wit, the offence of carrying arms, and thereby committed an offence punishable under sections 6 and 3 (1) of the said Proclamation.

The offence in this second charge is one for which one of the prescribed punishments is death and, in fact, the second appellant was convicted thereon and sentenced to death.

The learned trial Judge acceded to this request of Crown Counsel, and the trial proceeded without the second appellant having had adequate notice that he would have to meet another charge of an offence for which one of the prescribed punishments is death, and also without counsel having been assigned to defend him.

Clearly, the second appellant was prejudiced by having to face this second charge without adequate notice, and the learned trial Judge should have adjourned the trial under section 160 of the Criminal Procedure Code, which is as follows :—

> If the new or altered or added charge is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor, as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

Such an adjournment would have afforded adequate notice to the second appellant to know at his trial what charges he had to meet, and would also have enabled counsel to be assigned to defend him. Since the first appellant had counsel assigned to him, and the facts show that both appellants were acting together, the second appellant was at a disadvantage in having no counsel to defend him.

Accordingly, the appeal of the second appellant against his conviction under the Public Order and Safety Proclamation succeeds. That conviction and sentence are set aside and a retrial ordered.

As regards the appeal of the second appellant against his conviction for abetment of extortion, the appeal is dismissed.

Order accordingly.

KN'G CHONG HENG v. P. P.

[App. Crim. Juris. (Laville, J.) July 6, 1946]

Opium and Chandu Proclamation, Sections 4 (5) and 7 — Charge of Importing Chandu — Importation for self-consumption — Assessment of punishment — Length of period necessary for cure of addict to be taken into consideration.

In this case the accused appealed against a sentence of 6 months' r.i. for importing chandu, an offence under Section 7 of the Opium and Chandu Proclamation. At the trial accused admitted the offence and in his grounds of appeal he stated that he was an addict and that the chandu was for his own consumption.